



16201 E. Indiana Ave., Suite 3280  
Spokane Valley, WA 99216  
(509)624-1158 - [www.miningamerica.org](http://www.miningamerica.org)

June 15, 2023

The Honorable Bruce Westerman  
Chairman  
House Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, D.C. 20515

The Honorable Raul Grijalva  
Ranking Member  
House Committee on Natural Resources  
1332 Longworth House Office Building  
Washington, D.C. 20515

Re: June 15, 2023 Legislative Hearing on H.R. 3397, *"To require the Director of the Bureau of Land Management to withdraw a rule of the Bureau of Land Management relating to conservation and landscape health."*

Dear Chairman Westerman and Ranking Member Grijalva,

The American Exploration & Mining Association (AEMA) submits the following statement for the record for the above-referenced hearing.

AEMA supports H.R. 3397, which would require the Director of the Bureau of Land Management to withdraw its Conservation and Landscape Health rule, also called the Public Lands Rule. We urge the committee to approve it swiftly.

### **Who We Are and the Importance of the U.S. Minerals Mining Industry**

AEMA is a 128-year-old, 1,400-member national trade association representing the mineral development and mining industry, with members residing across 46 states, 7 Canadian provinces or territories and 10 other countries. AEMA is the recognized national representative for the exploration sector, the junior mining sector, as well as mineral developers interested in maintaining access to public lands. Thus, AEMA represents the entire mining life cycle, from exploration to mineral extraction and then to reclamation and closure. More than 80 percent of our members are small businesses or work directly for small businesses.

American miners continue to play an indispensable role in building and defending our Nation. From foundations to roofs, power plants to wind farms, roads and bridges to communication grids and data storage centers, America's infrastructure begins and ends with minerals and mining. As just one example, steel resulting from mining operations directly supplies the construction and development of roads, railways, appliances, buildings, stadiums, bridges, airports, conventional and renewable energy facilities, and other structures. Steel is used to reinforce concrete and other construction materials and 6 billion tons of steel are used across the U.S. National Highway System. Steel requires iron ore for its production, and 65 percent of the global zinc consumption is used to coat steel, for purposes of making it resistant to corrosion. Other metals important to steel alloys, including manganese, chromium, nickel, aluminum,

vanadium, tungsten, titanium, cobalt, and niobium, are specifically identified on the U.S. Geological Survey's (USGS') final 2022 list of critical minerals.<sup>1</sup>

Another example is copper, with its flexibility, conformity, conductivity, and resistance to corrosion, that make it an ideal and essential clean energy metal.<sup>2</sup> Forty-three percent of U.S. copper demand comes from the construction industry, as the average American home contains 439 pounds of copper. An electric vehicle (EV) uses approximately four times as much copper as a conventional car.

Infrastructure improvement and development at all levels depends on metals and mining. Beyond hard-rock mining, AEMA also represents the industrial minerals industry. Industrial minerals include any rock or mineral with economic value that is not used as a source for metals, gemstones, or energy production. Industrial minerals are classified as non-fuel minerals and differ from construction aggregates like sand, gravel, and crushed stone. Many different types of industrial minerals serve multiple uses, some of which are considered critical minerals and many of which are essential to our nation's economic and national security. The most widely used industrial minerals include limestone, clays, diatomite, kaolin, bentonite, silica, barite, gypsum, potash, pumice, and talc.

Similarly, there is no substitute for phosphorus in agriculture and in the development of our Nation's food supply. Phosphorus is essential for plant nutrition and plays a vital role in photosynthesis, energy transfer, root formation, seed formation, plant growth and improvement of the quality of fruits and vegetables. China has been the leading producer of phosphates, followed by the United States. The Society for Mining, Metallurgy & Exploration's (SME) website<sup>3</sup> provides a deeper introduction to industrial minerals and explains why securing domestic production is essential to America's future.

There is no question that the minerals we produce are indispensable to modern society. They are also essential to fighting climate change, and for zero-emission technologies such as wind turbines, solar panels, storage batteries and EVs. As these technologies are deployed in ever-greater numbers, the demand for minerals is skyrocketing, and our Nation must do more to keep up. The International Energy Agency (IEA) published a report at the end of July 2022 titled "Global Supply Chains of EV Batteries," and noted that demand for EV batteries will increase from 340 GWh today to about 3500 GWh by the year 2030. To meet that demand, 50 new lithium mines, 60 more nickel mines and 17 more cobalt mines would need to come into production.<sup>4</sup>

Congress has taken note of this surge in demand, and through the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act of 2022, has decided – and we agree – that it is inappropriate, unwise and dangerous to rely on hostile, untrustworthy or unstable countries to supply our country's minerals. Congress has sent a clear message – **Now is the time to get serious about building a reliable mineral supply chain** (emphasis supplied). AEMA and its members stand ready to help build that supply chain right here in America.

---

<sup>1</sup> <https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals>

<sup>2</sup> According to the World Bank, copper is used in ten low-carbon energy technologies.  
<https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>

<sup>3</sup> <https://www.smenet.org>

<sup>4</sup> <https://iea.blob.core.windows.net/assets/4eb8c252-76b1-4710-8f5e-867e751c8dda/GlobalSupplyChainsOfEVBatteries.pdf>

Our members take great pride in producing the metals and other important minerals America needs for national and economic security, as well as the materials people use in their everyday lives. We are proud of our members' contributions across the communities and regions where they operate, many of which are rural areas facing significant economic and social development challenges. Notably, the U.S. mining industry is the safest, most environmentally responsible mining industry in the world. Our members have repeatedly demonstrated that mining and protecting the environment are compatible, as mineral producers make possible the development of society's basic needs and consistently minimize modern society's impacts on the environment.

### **We Need a Reliable Domestic Mineral Supply Chain**

Recent global events have exposed the United States' supply chain vulnerabilities, highlighting the importance of an abundant and affordable supply of domestic minerals for America's future.

The fact is, global mineral demand is skyrocketing. As noted in a report from the International Energy Agency, keeping global temperature rise to below 2 degrees Celsius above preindustrial levels will quadruple the demand by 2040 for the minerals needed to build wind turbines, solar panels, and electric vehicles. A faster energy transition — reaching net zero globally by 2050 as the Biden Administration has called for— would require critical mineral inputs to increase sixfold by 2040.

Solar panels require silver, tin, copper, and lead; wind turbines use rare earths, copper, aluminum, and zinc; electric vehicles are built with copper, aluminum, iron, molybdenum; and rechargeable storage batteries use lithium, vanadium, nickel, cobalt, and manganese. Approximately 40 percent of the gold now produced is used in electronics and computer chips that are needed for clean energy technologies to meet carbon emission reduction objectives to address climate change.

President Biden has promised to convert the entire U.S. government fleet – about 640,000 vehicles by 2030 – to EVs. That plan alone could require a 12-fold increase in U.S. lithium production to manufacture the lithium-ion batteries that power EVs, according to Benchmark Minerals Intelligence, as well as increases in output of domestic copper, nickel, and cobalt - and that's just for the U.S. government vehicle fleet. The magnitude of the minerals needed for a 100 percent EV market is even more staggering, and simply cannot be ignored.

Unfortunately, a lack of access to economically viable mineral deposits and a lengthy, inefficient federal permitting system has resulted in the United States being increasingly dependent on foreign sources of strategic and critical minerals. It's time that we, as a Nation, recognize this vulnerability and the vital importance of minerals to our national security, our economy, and our everyday lives. We have heard a lot over the years about the importance of energy independence, but it is equally as important, if not more so, that we are minerals independent.

The Department of Interior's recent mineral withdrawal on the Superior National Forest is a painful example of a lack of coherence in the Biden administration's strategy in establishing robust, secure mineral supply chains that could contribute to their goals of ramping up deployment of low- or zero-carbon energy technologies to fight climate change. Projects such as Twin Metals, located within the boundaries of the Superior National Forest withdrawal, and now in serious jeopardy because of the withdrawal, could supply more than 90 percent of the United States'

nickel, 88 percent of our cobalt, and roughly 33 percent of the Nation's copper. Renewable energy technologies simply do not function without these metals, especially copper.

Made in America must include "mined in America" and sourcing minerals from U.S. mines that use state-of-the-art environmental protection measures, put a premium on worker health and safety, and have financial assurances that guarantee reclamation when mining is complete.

Recycling will play an important role in meeting increasing metal demand, but it will not be enough. The IEA's report estimates that by 2040, recycling metals from spent batteries could only supply about ten percent of the minerals that will be needed.

The United States and our economy simply need more mines. According to the USGS' Mineral Commodity Summaries 2023, our country's import dependence for key mineral commodities has doubled over the past two decades, with the United States now 100 percent import-reliant for 15 of its key minerals and more than 50 percent import-reliant for an additional 36 key mineral commodities. This foreign reliance continues despite the existence of significant mineral deposits of many of these commodities within our borders. Moreover, U.S. mineral import reliance continues to increase as mineral demand from essential industries, such as energy and transportation, soars. Notably, the World Bank sees mineral demand for advanced energy technologies jumping by nearly 500 percent by the year 2050.<sup>5</sup> Copper demand alone may rise as much as 350 percent by 2050, according to one estimate.<sup>6</sup>

### **Access to Federal Public Lands is Vital for Domestic Mining**

In the United States, most hardrock mining takes place on federal land, after a lengthy and rigorous permitting process that involves local, state and federal regulatory agencies and many diverse stakeholders. Even after the mine begins operation, it must adhere to a myriad of environmental laws and regulations, and financial assurance instruments ensure that cleanup and restoration will take place when mining activities cease. However, mineral deposits are unique and rare. Unlike other economic development or infrastructure projects that have some flexibility in choosing where they are sited and can move accordingly - mineral deposits are where they are.

Almost every year, the federal lands available for mineral entry shrinks. According to the GAO, the federal government manages about 650 million acres, or 29 percent, of the 2.27 billion acres of land in the United States.<sup>7</sup> Former Department of Interior Solicitor, John Leshy (now a professor at the University of California Hastings College of Law), estimated in 2021 that of the approximate 650 million acres of public lands, roughly 400 million acres are set aside for conservation and preservation purposes and are functionally off-limits to mining.<sup>8</sup> He also calculated that during the period from 1980 to 2020, the acres of conservation and preservation lands grew from 250 million acres to 400 million acres.<sup>9</sup> Federal lands have been withdrawn from mineral entry to protect a variety of "special places," from national monuments and wilderness areas to military bases. For example, the National Conservation Lands System

---

<sup>5</sup> <https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>

<sup>6</sup> (<https://www.sciencedirect.com/science/article/abs/pii/S0959378016300802>)

<sup>7</sup> GAO Letter report to Senator Tom Udall entitled "*Hardrock Mining: Availability of Selected Data Related to Mining on Federal Lands*," May 16, 2019, available at: <https://www.gao.gov/assets/gao-19-435r.pdf>.

<sup>8</sup> John D. Leshy, *America's Public Lands – A Look Back and Ahead*, 67th Annual Rocky Mountain Mineral Law Institute, July 19, 2021.

<sup>9</sup> *Id.*

already includes 35 million acres of pristine, culturally diverse and scientifically important sites that have been withdrawn from mineral entry, including: 122 national monuments, 28 of which are managed by BLM; 23 national conservation areas; 30 National Scenic and Historic Trails; 200 designated Wild and Scenic Rivers; 260 congressionally designated Wilderness areas; and 491 wilderness study areas.<sup>10</sup> Congress has closed or withdrawn areas to mineral exploration in favor of other uses, including for the following:

- National Parks;
- National Monuments;
- Indian reservations;
- Various types of Bureau of Reclamation projects;
- Military reservations;
- Scientific testing areas;
- Wildlife protection areas;
- National Wilderness Preservation System and Wilderness study lands; and
- Wild and Scenic River designated and study areas.<sup>11</sup>

After Executive Order 14008 in which President Biden set a goal of preserving and restoring 30 percent of U.S. lands and waters by 2030,<sup>12</sup> AEMA grew concerned that more withdrawals were on the way. That has proven to be true, as two withdrawals have been finalized in the first half of 2023 already, and more are in process.

Shrinking the available land base where mineral exploration and mining are allowed reduces the number of future mineral discoveries that can become mines. This ultimately increases the Nation's reliance on foreign minerals and thwarts the country's goals to increase domestic production and become more mineral independent. A 1999 report by the National Research Council of the National Academy of Sciences notes that "Only a very small portion of the earth's continental crust (less than 0.01%) contains economically viable mineral deposits."<sup>13</sup> The Academy further noted that, on average, 1,000 mineral targets must be examined before discovering the deposit capable of becoming a mine. Every time we declare land off-limits to mining, we shrink the playing field and stack the odds higher against discovery.

### **BLM Proposed Rule on Conservation and Landscape Health**

It is against this backdrop that AEMA opposes the Bureau of Land Management's (BLM) Proposed Rule on Conservation and Landscape Health (Proposed Rule), which would significantly change the way BLM manages the 245 million acres of public land it oversees, most of it in western states. The Proposed Rule is illegal and should be withdrawn immediately. If BLM refuses to withdraw the rule, Congress must act swiftly and approve H.R. 3397.

---

<sup>10</sup> BLM website: <https://www.blm.gov/programs/national-conservation-lands>.

<sup>11</sup> See BLM website: <https://www.blm.gov/programs/energy-and-minerals/mining-and-minerals/locatable-minerals/mining-claims/locating-a-claim>; see also Attachment 5, "List of Select Federal Laws Amending or Affecting the Mining Law of 1872," identifying principal laws under which federal lands have been withdrawn from mineral entry.

<sup>12</sup> See Executive Order 14008 "Tackling the Climate Crisis at Home and Abroad" (January 27, 2021) and the "America the Beautiful Initiative."

<sup>13</sup> National Academy of Sciences/National Research Council, "Hardrock Mining on Federal Lands" (1999), P. 23-24, available at <https://nap.nationalacademies.org/catalog/9682/hardrock-mining-on-federal-lands>

While the Proposed Rule pays lip service to the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1701 *et seq.*) as amended, (“FLPMA”), it fundamentally violates FLPMA in multiple ways, including illegally adding “conservation” as a “use” when Congress did not include it in FLPMA’s specific list of uses (FLPMA Section 103(l); redefining key terms already defined by Congress in FLPMA, “multiple use” and “sustained yield” (FLPMA Section 103(c and h)); contorting the scope and definition of “areas of critical environmental concern” beyond FLPMA’s scope and using current administration “conservation,” “restoration,” and “ecosystem resilience” policies to impermissibly withdraw public lands from public use in violation of FLPMA § 204.

Since 1970, Congress has consistently and repeatedly recognized that minerals and mining are essential to all facets of our economy, society, and national defense. The U.S. Mining Law, as amended (30 U.S.C. 21a *et seq.*) (“Mining Law”), the Mining and Minerals Policy Act of 1970 (30 U.S.C. § 21(a)) (“MMPA”), the National Materials and Minerals Research Policy Act of 1980 (30 U.S.C. §§ 1601-1605) (“MMPRDA”), the Infrastructure Investment and Jobs Act of 2021 (30 U.S.C. §§ 1607, *et seq.*) (also known as the Bipartisan Infrastructure Law) (“IIJA”); and the Inflation Reduction Act of 2022 (H.R. 5376) (“IRA”) all direct the Executive Branch agencies to respond to the Nation’s need for domestic minerals (see e.g., 30 U.S.C. §§ 21a and 1602) and direct the Department of Interior (“DOI”) to streamline the permitting processes for domestic mineral development. IIJA Section 40206; IRA § 13401. In stark contrast with these legal obligations, BLM’s Proposed Rule § 6102.4(a)(4) “would preclude the BLM, subject to valid existing rights and applicable law, from authorizing other uses of the leased lands that are inconsistent with the authorized conservation use.” FR at 19591.

The provisions requiring identification and conservation of “intact landscapes” and “watershed scale” ecosystems are simply new terms to articulate the Planning Rule 2.0 approach for landscape-scale planning that Congress killed in 2017.<sup>14</sup> These provisions violate the Congressional Review Act (5 U.S.C. §§ 801 *et seq.*) (“CRA”). BLM cannot legally breathe new life into this rejected approach. See 5 USCS § 801(b)(2).

In issuing the Proposed Rule, BLM violated a host of procedural laws that have substantive implications. The Regulatory Flexibility Act (“RFA”), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. §§ 601 *et seq.*) (“SBREFA”), requires federal agencies to prepare a regulatory flexibility analysis, subject to notice and comment under the Administrative Procedure Act, if the rule would have a significant economic impact on a substantial number of small businesses and governments. BLM summarily concluded—without making the required fact-based certification—that it did not apply, so did not conduct the required regulatory flexibility analysis. See FR at 19594. In similar cavalier fashion, BLM announced it would apply a categorical exclusion to the rulemaking and, therefore, violated its obligations under the National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*) (“NEPA”).

Cherry-picking preferred Executive Orders (E.O.), while ignoring others, does not legitimize the Proposed Rule. Specifically, BLM leans on E.O. Nos. 13990 and 14008 to support the climate change and ecosystem resilience provisions in the Proposed Rule. However, BLM ignores E.O. 14017 and its focus on resilience—in America’s supply chains—including critical and strategic mineral and rare earth element (“REE”) supply chains and domestic sources. It is time that DOI

---

<sup>14</sup> H.J. Res. 44, Pub. L. 115-12, 131 STAT. 76 (March 27, 2017): “Congress disapproves the rule submitted by the Bureau of Land Management of the Department of the Interior relating to “Resource Management Planning” (published at 81 Fed. Reg. 89580 (December 12, 2016)), and such rule shall have no force or effect.”

and BLM acknowledge that energy transformation and climate change actions ***require more minerals*** and that national security demands domestic sources of minerals. The Proposed Rule would thwart these equally important administration policies.

Regardless of this administration's policy inconsistencies, Congress has spoken clearly and unequivocally on numerous occasions including FLPMA, the MMPA, the MMPRDA, the IJIA, and the IRA to define mineral exploration and production as a "major" and important use of public lands, one that is important for national security and America's economy. Conversely, Congress has not identified "conservation" as a "use." It is important to note that in explicitly defining "multiple use" and "sustained yield," FLPMA did not define conservation or include it in the Section 102(a) land use management directives though Congress clearly could have done so if it intended conservation to be a "use." FLPMA uses the word "conservation" in a very limited way. It is never used to establish land management objectives. Rather, it is only used in a restricted way to reference previously Congressionally designated conservation areas. In fact, there are only six sections in FLPMA that use the word "conservation":

- California Desert Conservation Area: Section 206(c), Section 303(e), Title VI, Section 601(c)(1), (c)(2), (d), (e), (f), (g)(1), (h);
- Conservation system unit or the Steese National Conservation Area: Section 302(d)(1);
- Alaska National Interest Lands Conservation Act: Section 302(d)(4) and (d)(6);
- Land and Water Conservation Fund: Section 318(d)
- Kings Range National Conservation Area: Section 602; and
- Conservation of the Yaquina Head Outstanding Natural Area: Section 603(c).

The limited ways in which FLPMA mentions conservation to describe lands that in 1976 were already designated for special management is additional proof that Congress never intended to authorize making conservation a "use" or a tool for BLM to use to restrict or prohibit multiple-use.

Where Congress intended conservation to be a "principal or major use" of federal land, it has enacted laws for that specific use. *See, e.g.*, 16 U.S. Code § 7202 (establishing the National Landscape Conservation System); 54 USCS § 100101 (establishing that the National Park System's purpose is to "conserve the scenery, natural and historic objects, and wild life"). Congress was further explicit in identifying an entirely different agency from BLM to focus on conservation – the National Park System. *Sierra Club v. United States DOI*, 899 F.3d 260, 292 (4th Cir. 2018) ("Thus, unlike other Federal lands, such as the national forests, the National Park System's sole mission is conservation.")). If Congress intended FLPMA to include conservation as a "use" or priority as BLM now suddenly suggests, Congress would have done so explicitly. *See, e.g.*, *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 ("Congress could not have intended to delegate' such a sweeping and consequential authority 'in so cryptic a fashion.'"); *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 485 (1996) ("Congress ... demonstrated in CERCLA that it knew how to provide for the recovery of cleanup costs, and ... the language used to define the remedies under RCRA does not provide that remedy."); *FCC v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 302 (2003) (when Congress has intended to create exceptions to bankruptcy law requirements, "it has done so clearly and expressly").

The Bureau of Land Management should focus on actual land management, rather than proposing to lock public lands away from any public use but "protection" and "ecosystem resilience." Make no mistake, our members are strong supporters of promoting conservation objectives not only for



public lands but all of the country's resources and are ready to continue to work with BLM to further advance these goals. However, this will not be accomplished by the flawed and illegal provisions of the Proposed Rule. The Proposed Rule must be withdrawn by BLM or repealed by Congress.

AEMA has numerous, extensive concerns with the rule. The list below is not exhaustive and provides a brief summary:

- **The proposed rule violates the law.** Despite BLM's claims to the contrary, the "plain language" of FLPMA includes a list of "principal or major uses," including mineral exploration or development, domestic livestock grazing, timber production, fish and wildlife development and utilization, rights-of-way and recreation. The law specifies that its mandate "includes and is limited to" these uses. Notably, conservation or "nonuse" was not listed.
  - **If Congress intended for conservation to be a use "on equal footing," they would have included it in the statutory list. BLM cannot change that.** FLPMA Section 102(b) explicitly states: "The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation." Creating conservation leases and elevating conservation to a major or principal use is a substantial change, not a "clarification," as BLM asserts.
  - **BLM acknowledges the novelty of the conservation lease concept** when it says "FLPMA's declaration of policy and definitions of 'multiple use' and 'sustained yield' *reveal* [emphasis added] that conservation is a use on par with other uses under FLPMA." The idea that this concept is just now being "revealed" 50 years after the passage of FLPMA is absurd and unlawful.
  - **The rule bears many similarities to the Planning Rule 2.0 for landscape-scale planning**, which Congress repealed in 2017 through the Congressional Review Act. This proposal tries to repackage landscape-level planning as a tool to address climate change. This new justification for landscape-scale planning cannot be used to resurrect a concept that Congress has already rejected.
- **Conservation leases, ACECs, and preserving intact landscapes are *de facto* land withdrawals that undermine "multiple-use" standards outlined in FLPMA.**
  - The proposal would allow leases for conservation or compensatory mitigation. As worded, BLM could extend mitigation leases **indefinitely**, precluding the balance required under FLPMA.
  - Future uses under the proposed rule must be consistent with the purpose of the conservation lease. In testimony before the House Natural Resources Committee on May 16, 2023, BLM Director Tracy Stone-Manning acknowledged that "energy development and mining would likely not be deemed compatible with a conservation lease..."
  - As such, conservation would not just be "on equal footing," it would be elevated above other uses.
- **Use of Areas of Critical Environmental Concern (ACECs) would be greatly expanded.**



- Frequently abused to prevent development, the rule would allow ACECs to be larger and easier to designate. Areas nominated must be managed as an ACEC immediately, even before process is concluded.
- No consideration of impacts to multiple use or mineral resources within the nominated area is required.
- **The rule will exacerbate permitting delays.**
  - Under the proposal, all lands will require a “Fundamentals of Land Health” review prior to authorization for use, a process currently applied only to grazing lands. BLM already struggles with large backlogs in grazing permit renewals because of this review requirement. Applying it to all uses would only serve to increase permitting backlogs for all productive uses.
- **Creates a New Zero-Impact Standard that Ignores How FLPMA’s Unnecessary and Undue Degradation Mandate Effectively Protects the Environment While Allowing Multiple Use.**
  - The rule’s unnecessary or undue degradation definition restates what BLM has implemented for nearly five decades to prevent excessive or disproportionate impacts.
  - However, the new conservation measures demand zero impact in ACECs, conservation leases, and intact landscapes, which is contrary to FLPMA’s acknowledgement that some degradation is necessary for multiple use to occur and the requirement to minimize that degradation.
- **BLM’s rule is incomplete, deficient, flawed and rushed.**
  - The Regulatory Flexibility Act (RFA) requires BLM to prepare a regulatory flexibility analysis, subject to notice and comment under the Administrative Procedure Act, if the rule would have a significant economic impact on a substantial number of small businesses and governments. BLM did not conduct a regulatory flexibility analysis before its arbitrary declaration that the rule “will not have a significant economic effect on a substantial number of small entities...”
  - BLM asserts the proposal will have an annual effect on the economy of \$100 million or less, so they did not conduct an economic analysis. However, the agency’s own [“Sound Investment 2022”](#) report shows multiple-use on BLM lands generated \$201 billion in economic output last year.<sup>15</sup> If conservation leasing decreases activity by just 1%, that’s **an impact of \$2 billion annually**.
  - The report mentioned above notes BLM redistributed \$2 billion to States for revenue-sharing programs, yet BLM arbitrarily determined the proposed rule has no federalism implications, so it did not prepare a federalism summary statement of the effects on the States.
  - Using BLM’s own data from the Sound Investment report strongly suggests **BLM’s claims regarding economic impact are false** and that it is **merely seeking to circumvent** an Economic Threshold Analysis and the CRA.
  - **The proposal violates NEPA.** BLM plans to use a Departmental Categorical Exclusion under NEPA, because the rule is “too broad, speculative or conjectural” to lend itself to “meaningful analysis.” The rule is a “major federal action” subject

---

<sup>15</sup> Bureau of Land Management, Socioeconomic Impact Report 2022, <https://www.blm.gov/about/data/socioeconomic-impact-report-2022>

to an EIS containing an analysis of the significant socio-economic impacts, and the environmental effects of foregoing critical and strategic mineral development.

## Conclusion

BLM's Proposed Rule is illegal—it directly violates FLPMA in the many ways addressed above. It also violates numerous other federal laws. Moreover, BLM's attempts to circumvent procedural rulemaking requirements violate the federal laws designed to ensure transparency, accountability, and Congressional oversight.

Since 1970, Congress has consistently and repeatedly recognized that minerals and mining are essential to all facets of our economy, society, and national defense. It bears repeating that the Mineral and Mining Policy Act (1970), FLPMA (1976), the National Minerals, Materials Policy Research and Development Act (1980), the Energy Act (2020), the IIJA (2021), and most recently the IRA (2022) all direct the Executive Branch agencies to respond to the Nation's need for domestic minerals. Yet, the Proposed Rule brazenly ignores more than 50 years of Congressional intent and direction.

More lands continue to be withdrawn from mineral entry, and permitting timelines, costs, and risks have become intolerable. Our risky reliance on imported minerals is a direct result of five decades of ignoring Congress' clear directives that minerals should be mined from public lands to help satisfy the Nation's need for minerals. Despite the urgent need to increase domestic mining and reduce our dependency on foreign minerals, today it can take 10 years or more to permit a mine.

The findings in the IIJA that “critical minerals are fundamental to the economy, competitiveness, and security of the United States” and that “the Federal permitting process has been identified as an impediment to mineral production and the mineral security of the United States” must result in constructive action to streamline permitting and eliminate permitting impediments. Instead, the Proposed Rule will exacerbate America's dependence on foreign sources of minerals at a time when mineral demand is skyrocketing. The Biden administration's own goals of fighting climate change and reducing carbon emissions require more domestic mining – not less. The Proposed Rule fails to acknowledge any potential effects on our ability to develop minerals in the United States.

BLM simply cannot make the substantial land use policy and regulatory changes embodied in the Proposed Rule without Congressional action to amend FLPMA to authorize the agency's proposed change. Congress' power over federal lands is without limitations. *Nuclear Energy Inst., Inc. v. EPA*, 362 U.S. App. D.C. 204, 209, 373 F.3d 1251, 1256 (2004) (quotations omitted). And, while FLPMA Section 107 grants BLM discretion to manage public lands, it also requires BLM to manage lands “on the basis of multiple use and sustained yield[.]” 43 U.S.C. § 1701(a)(7); *see also Utah v. Norton*, No. 2:96-CV-0870, 2006 U.S. Dist. LEXIS 73480, at \*5 (D. Utah Sep. 20, 2006). Unless and until Congress says otherwise, BLM must manage the public lands pursuant to FLPMA's multiple use mandates, notwithstanding the difficulties in achieving the balanced land management approach that FLPMA demands.

Under FLPMA, BLM must balance all multiple uses; it cannot pick and choose which land use directives to emphasize and which ones to subordinate or even deny. Given our Nation's need for

a strong domestic mineral supply, and the proven benefits that modern mining provides to local communities, the federal government should not consider adding restrictions that would discourage or disincentivize mineral development. Now is the time for BLM to stop subverting Congressional mandates and, instead, work to facilitate the development of the critical resources that are needed now and available on America's public lands, for national security and the economic well-being of all Americans. Because BLM lacks the authority to reduce the scope of allowable multiple uses on public lands, BLM cannot proceed with the Proposed Rule and should withdraw it immediately. Failing that, Congress should repeal it through H.R. 3397.

We look forward to continuing to work with you to ensure America has a secure and affordable supply of the minerals and metals needed for our modern society.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark O. Compton". The signature is fluid and cursive, with a large initial "M" and a stylized "C" at the end.

Mark Compton  
Executive Director